

CLAUDIUS A. HATCH

IBLA 85-226

Decided March 10, 1986

Appeal from a decision of the Albuquerque District Office, Bureau of Land Management, rejecting an Indian allotment application. NM 59103.

Affirmed as modified.

1. Indians: Lands: Allotments on Public Domain: Lands Subject to

Where a Paiute Indian files an Indian allotment application for land located in New Mexico, pursuant to sec. 9 of the Act of Dec. 22, 1974, 25 U.S.C. § 640d-8 (1982), which provides only for the allotment of certain land in Arizona to qualified Paiute Indians, the application is properly rejected.

APPEARANCES: Claudius A. Hatch, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Claudius A. Hatch appeals the November 29, 1984, decision of the Albuquerque District Office, Bureau of Land Management (BLM), rejecting his Indian allotment application NM 59103. Hatch filed the allotment application with BLM on October 9, 1984, pursuant to the Act of December 22, 1974, as amended, 25 U.S.C. § 640d (1982), representing therein that he is a San Juan Southern Paiute Indian. BLM rejected the application because: "The land applied for in your application located in the NE 1/4 Sec. 15, T. 27 N., R. 15 W., NMPM, New Mexico, is included in Enlargement Navajo Indian Reservation under Executive Order of January 6, 1880." In addition, in a letter to Hatch dated December 11, 1984, BLM stated that the Act of December 22, 1974, "does not allow for the selection of lands as an individual."

In his statement of reasons for appeal Hatch states: "This act [Act of December 22, 1974] provides a means of granting to qualified individual Indians portions of established Indian Reservations as well as tracts of public domain. The rejection notice -- copy inclosed which I received seems to contradict the above mentioned act."

[1] The 1974 Act, as amended, provides for a settlement of the conflicting rights and interests of members of the Hopi and Navajo Tribes to

land reserved by Executive order of December 16, 1882. In addition, section 9 of the 1974 Act authorizes the Secretary to allot land in severalty to certain Paiute Indians. Section 9 provides:

Notwithstanding any other provision of this subchapter, the Secretary is authorized to allot in severalty to individual Paiute Indians, not now members of the Navajo Tribe, who are located within the area described in the Act of June 14, 1934 (48 Stat. 960), and who were located within such area, or are direct descendants of Paiute Indians who were located within such area, on the date of such Act, land in quantities as specified in section 331 of this title and patents shall be issued to them for such lands having the legal effect and declaring that the United States holds such land in trust for the sole use and benefit of each allottee and, following his death, of his heirs according to the laws of the State of Arizona. [Emphasis added.]

25 U.S.C. § 640d-8 (1982). The purpose for section 9 was to authorize the Secretary to allot to certain Paiute Indians lands within the boundaries of the Navajo Reservation in Arizona as established by the Act of June 14, 1934, 48 Stat. 960. All of the land described in the 1934 Act is located in Arizona. The land sought by Hatch is situated in New Mexico. BLM has no authority under section 9 of the Act of December 22, 1974, to approve a Paiute Indian allotment application for land located in New Mexico. 1/ Therefore, BLM properly rejected Hatch's Indian allotment application.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Bruce R. Harris
Administrative Judge

We concur:

James L. Burski R. W. Mullen
Administrative Judge

Administrative Judge

1/ BLM's Dec. 11, 1984, letter to Hatch stated that the 1974 Act did not allow for selection of lands by an individual. However, section 9 of that Act allows allotments to be made to certain qualified Paiute Indians. Hatch might be entitled to such an allotment if he can meet the requirements of that section.

